Supreme Court, U.S.
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NO. _____

SUPREME COURT OF THE UNITED STATES

CAROL BARNES

Petitioner

VS.

MICHAEL ROZMAN, JOHN CAPRIOTTI, PSP AND JOANNA REYNOLDS

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Don Bailey, Esquire
PAID# 23786
4311 N. 6th Street
Harrisburg, Pa 17110
(717) 221-9500

QUESTIONS PRESENTED

Is the law of constructive discharge applicable to First Amendment retaliation claims for speaking out on matters of public concern and for denial of access to the courts?

PARTIES TO THE PROCEEDINGS

The petitioner is Carol Barnes.

The Respondents are Michael Rozman, John Capriotti, Joanna Reynolds and the PSP.

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OPINTIONS BELOW

The decision of the Court of Appeals is docketed at No. 03-2965 in the United States Court of Appeals for the Third Circuit. The Court of Appeals classified the opinion as "Not Precedential" and it is reprinted in the Appendix to this petition ("Pet.App") at 10a. The decision of the District Court is not reported, but is reprinted at Pet.App.1a.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on July 2004, and this petition in being filed within 90 days thereafter. The Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the Constitution of United States reads as follows:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or bringing the freedom of speech, or the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The Constitutional right petitioner claims a deprivation of her right of access to the Courts, and retaliation for speaking out.

STATEMENT OF THE CASE

On December 17, 2001 Carol Barnes filed her original civil rights suit which the District Court ultimately dismissed, granting all of the defendants motions for summary judgment, in a 9-page memorandum, on July 2, 2003. Pet.App.10a. Carol Barnes alleged Title VII violations, unlawful retaliation, and certain supplemental state claims, including the intentional infliction of mental distress. The District Court never addressed the supplemental state claims in its memorandum, nor did it address an express a retaliatory mental distress claim as per 42 U.S.C. §1983.

Carol Barnes is an ex-Pennsylvania State Police (PSP) employee. She and two co-workers were subjected to systematic sexual harassment at the hands of a former PSP Major named William Dixon. Dixon physically abused, even raped, one of the women, and he physically and emotionally abused all of them over a period of years. After persistent complaining by one of the women, the PSP assigned an investigator, Lt. Charles Skurkis, to the matter. Eventually Dixon made a deal and pled guilty to one misdemeanor level charge of indecent assault and his sentence was probation (one women was so affected she was discovered driving her car around in circles in the PSP parking lot having lost control of her senses). Dixon was even allowed to garner a little added time so he could retire on full benefits. On the other hand, the women were oppressed during the plea agreement process. Barnes contends she was asked to sign a paper agreeing not to take action against the PSP or Dixon. The Respondent Rozman disputes there was any such agreement or paper. Barnes says she later raised the issue of

taking action against Dixon and her PSP employer, with the Respondent Reynolds (a PSP attorney) and claims she was told by Reynolds she could not take action. Reynolds does remember talking to Carol but denies ever telling her she couldn't take legal action against the PSP or Dixon. All of this occurred circa 1995-1996-1997. After the plea agreement Carol went, on innumerable occasions, to her peer contact (personnel confidant) Josephine Fure, as assistant personnel director for the PSP to seek emotional support and complain of retaliation by Capriotti. Only Fure's unending kindness for the next few years kept Carol going. Fure confirms that Carol did complain to her during one of her frequent periods of upset that she wasn't allowed to proceed against the PSP or Dixon. Over the years Barnes went to Virginia Smith Elliott (The Departmental Affirmative Action Officer) and Josephine Fure, along with Joanna Reynolds on numerous occasions about the retaliation she was suffering at the hands of Capriotti. These woman, Elliott, Fure, and Reynolds all warned Capriotti in a number of meetings that his treatment of Barnes was retaliatory, was wrong, and should cease. He would not relent. In fact, his response was to surreptitiously go to a Deputy Commissioner and get the authority to supervise Barnes. He believed the Captain who was supervising her was not doing so adequately — this after being warned numerous times to stop mistreating her. Finally, on December 12, 1999, Barnes suffered a debilitating nervous breakdown at work after suffering the final blows in a series of insults and degradations at the hands of Mr. Capriotti. She, has, from that time on, suffered debilitating emotional distress so severely, that she has been forced to be medicated and undergo extensive counseling. She is disabled now and will undoubtedly be for the rest of

her life. She left the employ of the PSP on January 12, 2000. The District Court found however, that her statute had run on (December 12, 1999) date and the Third Circuit affirmed that holding. Mr. Capriotti caused her nervous breakdown (December 12, 1999). Carol alleges she suffered a constructive discharge and, based upon doctor's warnings and her own fears could not return to work, retiring on January 12, 2000. Did she suffer a constructive discharge tolling her statute on January 12, 2000, or was the last act of retaliation on December 12, 1999 by Capriotti the beginning of the applicable 2 year limit?

REASONS FOR GRANTING THE WRIT

In *Pennsylvania State Police v. Suders*, 124 S.Ct. 1626 (2004) 158 L.Ed.2d. 263, a Title VII case, this court devoted significant analysis to the issue of "constructive discharge". "Although this court has not had occasion earlier to hold that a claim for constructive discharge lies under Title VII, we have recognized constructive discharge in the labor law context." citing *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 894(1984). In the Barnes case here, she was harassed unmercifully by her immediate supervisor, Pennsylvania State Police Captain John Capriotti. On December 12, 1999 Barnes suffered a nervous breakdown at work. Because she could not return to work due to the extensive emotional injury she had suffered she decided with her doctor's help to take retirement a couple of weeks later. So on January 12, 2000, because of the abuse she had suffered for years at the hands of the respondent Capriotti Carol Barnes left the employ of the Pennsylvania State Police.

Barnes argued before the District Court and the Third Circuit Court of Appeals that equitable tolling principles applied and that she had suffered a constructive discharge. Indeed, she had been counseled by Ms. Josephine Fure, an extremely kind and supportive PSP staffer (assistant personnel director), "not to quit, but rather to think about it", as she was shaking and crying inconsolably and sobbing that she could not work anymore. She took that advice. She thought about it and consulted her doctor. Because she had not raised timely Title VII issues in the underlying sexual harassment case, the courts below apparently believed that she did not have a valid or timely Title VII claim.

But what Barnes argues here is that she left the employ of the Pennsylvania State police on January 12, 2000 because of the egregious misconduct of respondent John Capriotti, in part based upon her doctor's advice, and in part based on her totally debilitated emotional and mental condition. Later, with her lawyer and doctor in consultation, her complaint was filed on December 17, 2002. The District Court and the Third Circuit Court of Appeals both held that her statute of limitations had run because her last day of contact with Mr. Capriotti occurred two years and two days previously (but more than three weeks before she left the employ of the Pennsylvania State Police knowing she had to make a decision to return to work or quit). This was a classic constructive discharge scenario. The issue before this court presents a case of first impression for civil rights complainants i.e. in cases where there is significant and egregious retaliatory misconduct by a supervisor, intentionally mistreating a subordinate for cooperating with a criminal investigation of a fellow police officer(Dixon) which results in a nervous breakdown and a constructive discharge a month after the complainants last contact with the precipitating misconduct of the supervisor, does the constructive discharge equitably toll the statute of limitations.

The District Court and the Third Circuit Court of Appeals both held that Ms. Barnes statute of limitations ran when she had her last contact with Captain Capriotti (which caused her nervous breakdown) and not when Capriotti's misconduct caused her constructive discharge nearly a month later based upon her doctor's insistence and her own pain.

Petitioner argues that under the facts in this case that she suffered a constructive discharge on January 12, 2000

when she was forced to elect retirement as opposed to subjecting herself to the egregious mistreatment she had been suffering from her supervisor Captain Capriotti who retaliated against her for standing up the sexual abuse she endured at the hands of Major Dixon a colleague of Capriotti's. Petitioner argues that the date of her constructive discharge is the day when her statute should have run for the First Amendment violations she alleges. She further argues that this is a jury question for a trier of fact and not a question of law for the court.

CONCLUSION

Wherefore petitioner respectfully requests that this court grant petitioner's Writ of Certiorari or i.e. in this case and permit briefing to go forward. There is a substantial federal question underlying the facts in this case which are directly applicable to public employee situations where employees suffer retaliation for speaking out on matters of public concern or are denied their right of access to the courts. Barnes in this case not only spoke out but had complained internally and attempted to file employment actions. She suffered substantial retaliation for all of this but has been denied her day in court.

Respectfully Submitted,

Don Bailey, Esquire
4311 N. 6th Street
Harrisburg, PA 17110
(717) 221-9500

APPENDIX EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CAROL BARNES and MICHAEL BARNES,

Plaintiffs

V.

CIVIL NO. 1:CV-O1-2396

(Judge Conner)

MICHAEL ROZZMAN,
JOHN CAPRIOTTI,
JOANNA REYNOLDS, and the
PENNSYLVANIA STATE POLICE,

Defendants

MEMORANDUM

Presently before the court are defendants' motions for summary judgment. (Does. 51-54). The parties have fully briefed the issues and the motions are now ripe for disposition.

I. Factual Background

Plaintiff, Carol Barnes ("Barnes"), is a former civilian employee of the Pennsylvania State Police ("PSP").

(Doc. 55, ¶1). Between summer 1988 and November 1992, William Dixon ("Dixon") sexually harassed Barnes on the job. Id.. During the time of the harassment, Dixon was Barnes' immediate supervisor. Id.

In 1992, Barnes' former co-worker, Kristi (Harner) Cook, complained to the PSP that Dixon had been sexually harassing her. (Doc. 80, 10). Immediately thereafter, the PSP transferred Dixon from PSP Headquarters in Harrisburg, Pennsylvania, to the PSP Training Academy in Hershey, Pennsylvania. Id. After Dixon's transfer, the PSP commenced an internal investigation into Ms. Cook's charges of sexual harassment. Id. PSP Lieutenant Charles Skurkis ("Skurkis") conducted the investigation. Id. at 11. Despite the harassment she claims she endured, Barnes did not want to participate in the investigation. Id. In fact, Barnes initially told Skurkis that she never observed Dixon engage in any misconduct. Id. at 12. Subsequently, Barnes relented and informed Skurkis that Dixon had sexually harassed her. Id. at 13.

As a result of the investigation, the PSP informed the Dauphin County District Attorney's office of Dixon's alleged misconduct. (Doc. 69, ¶1 7). Defendant, Assistant District Attorney Michael Rozman[1] ("Rozman"), handled Dixon's prosecution for the District Attorney's office. On several occasions in 1995 and 1996, Barnes met with Rozman and with PSP's attorney, defendant Joanna Reynolds ("Reynolds"), to discuss the charges against Dixon. (Doc. 55, 4). Allegedly, both Reynolds and Rozman misinformed Barnes that she would not be able to pursue a sexual harassment claim against Dixon or PSP as the result of a clause in Dixon's plea agreement. (Doc. 55, ¶1 5 & Doc. 69, 8). Dixon ultimately pled guilty to indecent assault. (Doc.

80, 5). In lieu of being fired, Dixon retired from his position with the PSP. Id. at ¶ 16.

Rozman surname is misspelled in the caption.

Defendant, John Capriotti (**"Capriotti"**), allegedly harassed Barnes in retaliation for her assistance in Dixon's prosecution. Barnes left her employment with PSP on or before December 12, 1999. She has never filed an administrative complaint regarding the alleged sexual harassment or retaliation with either the federal Equal Employment Opportunity Commission ("EEOC") or the Pennsylvania Human Relations Commission ("PHRC"). (Doc. 80, ¶ 17). On December 17, 2001, Barnes filed the instant complaint.

II. Legal Standard for Summary Judgment

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). See also Saldana v. Kmart Corp, 260 F.3d 228, 231-32 (3d Cir. 2001). A fact that will affect the outcome of the ease under the governing law is "material." Anderson v. Liberty Lobby. Inc., 477 U.S. 242, 248 (1986). "In determining whether an issue of material fact exists, the court must consider all evidence in the light most favorable to the non-moving party." Reeder v. Sybron Transition Corp., 142 F.R.D. 607, 609 (M.D.Pa. 1992) (citing White v. Westinghouse Electric Company, 862 F.2d 56, 59 (3d Cir. 1988)). See also Saldana, 260 F.3d at 232.

At the summary judgment stage, a judge does not weigh the evidence for the truth of the matter, but simply determines "whether there is a genuine issue for trial." Schnall v. Amboy Nat. Bank, 279 F.3d 205, 209 (3d Cir. 2002) (citing Anderson, 477 U.S. at 249). An issue of material fact is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id.

"Once the moving party has shown that there is an absence of evidence to support the claims of the non-moving party, the non-moving party may not simply sit back and rest on the allegations in the complaint; instead, it must 'go beyond the pleadings and by [its] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, and designate specific facts showing that there is a genuine issue for trial.'" Schiazza v. Zoning Hearing Bd., Fairview Tp., York County, Pennsylvania, 168 F.Supp.2d 361, 365 (M.D.Pa. 2001) (quoting Celotex Corp, 477 U.S. at 322-323.

III. Discussion

A. *Motion for Summary Judgment of Defendant Pennsylvania State Police*

In Count II of the complaint, Barnes asserts a claim of gender discrimination and harassment under 42 U.S.C. § 2000(e) et seq. ("Title VII") against the Pennsylvania State Police. Although plaintiff fails to articulate her Title VII claims clearly, the court recognizes certain Title VII claims which are implicated by the complaint: (1) gender discrimination and sexual harassment by William Dixon, and (2) retaliation by John Capriotti.

As a prerequisite to filing a federal civil action under Title VII, a potential plaintiff is required to file an administrative charge of discrimination with the Equal

Employment Opportunity Commission "within 300 days from the alleged violation." 29 C.F.R. § 1601.13(a)(4)(ii)(A). "[F]ailure to exhaust is akin to a failure to comply with a statute of limitations." Donovan v. Henderson, 45 Fed.Appx. 178, 179 (3rd Cir. 2002) (citing Robinson v. Dalton, 107 F.3d 1018, 1021 (3d Cir.1997); Spence v. Straw, 54 F.3d 196, 200 (3d Cir. 1995)).

It is undisputed that Barnes failed to file a charge of discrimination with the Equal Employment Opportunity Commission to this date. (Doc. 80, ¶ 17 & Doc. 85, ¶ 17). However, she claims that the doctrine of equitable tolling is applicable to her case. Equitable tolling will toll the running of the three hundred day period under 29 C.F.R. § 1601.13(a)(4)(ii)(A), if plaintiff proves that:

(1) the defendant has actively misled the plaintiff;

(2) the plaintiff has "in some extraordinary way" been prevented from asserting his rights; or

(3) the plaintiff has timely asserted his rights mistakenly in the wrong forum.

Jones v. Morton, 195 F.3d 153, 159 (3d Cir. 1999) (citing United States v. Midgley, 142 F.3d 174, 179 (3d Cir. 1998) & Kocian v. Getty Refining & Mktg. Co., 707 F.2d 748, 753 (3d Cir. 1983)).See also Zipes v. Trans World Airlines. Inc., 455 U.S. 385, 393 (1982); Communications Workers of America v. New Jersey Dept. of Personnel, 282 F.3d 213, 216-17 (3d Cir. 2002). The Third Circuit has explained that:

> Absent a showing of intentional inducement or trickery by the defendant, a statute of limitations should be tolled only in the rare situation where equitable tolling is demanded by sound legal principles as well as the interests of justice."

U.S. v. Midgley, 142 F.3d 174, 179 (3d Cir 1998) (quoting Alvarez-Machain v. United States, 96 F.3d 1246, 1251 (9th Cir. 1996)).

Barnes claims that PSP, through its attorney, Joanna Reynolds, actively misled her. According to the complaint, Reynolds informed Barnes that she could not bring a civil action against Dixon and PSP. In response, PSP contends that plaintiffs allegations are insufficient to trigger the doctrine of equitable tolling. The court agrees.

In order to invoke equitable tolling, the misleading conduct must occur before the expiration of the limitations period. .See e.g. Kocian v. Getty Refining & Marketing Co., 707 F.2d 748, 754 (3d Cir. 1983) (subsequently overruled on other grounds). For purposes of the motions for summary judgment only, the parties agree that Dixon's last act of sexual harassment of Barnes took place in November 1992. Thus, Barnes was required to file an administrative charge of discrimination on or before September 26, 1993. 29 C.F.R. § 1601.13(a)(4)(ii)(A). Reynolds' allegedly misleading conduct took place in 1996, well after the expiration of Barnes' limitations period. Thus, such conduct cannot be grounds for the equitable tolling of plaintiffs Title VII gender discrimination and sexual harassment claims.

Moreover, Reynold's alleged instruction that Barnes forfeited her right to sue PSP and Dixon in exchange for

Dixon's guilty plea, could only relate to *Dixon's* unlawful conduct. Plaintiff has presented no evidence whatsoever to demonstrate that she was somehow misled on the subject of her ability to file an administrative complaint against PSP based on Capriotti's alleged retaliatory conduct. (See e.g. Doc. 69, Exhibit 1, pp. 53-54). Accordingly, the doctrine of equitable tolling affords Barnes no relief in regard to her Title VII retaliation claim.

For the foregoing reasons, the court will grant the PSP's motion for summary judgment.

B. ***Motion for Summary Judgment of Defendants Reynolds & Rozman***

Attorney Joanna Reynolds and Dauphin County Assistant District Attorney Michael Rozman allegedly advised Barnes that she could not pursue any form of legal action against William Dixon and the PSP. (Doc. 1, Count I). Barnes asserts that this advice violated her First and Fourteenth Amendment right to access of the courts. Id. Reynolds and Rozman contend that, at the time of their meetings with Barnes, her sexual harassment claims against Dixon and the PSP were already time barred. Hence, Reynolds and Rozman assert that, even if the complaint accurately portrays their conversations with Barnes, which they expressly deny, such statements could not have violated her right to access the courts. The court agrees.[2]

As discussed above, the limitations period for Barnes' Title VII administrative remedies expired before she ever met with Reynolds or Rozman. See § 3.A., infra. Thus, her Title VII claims had lapsed and Reynolds and Rozman's allegedly improper advice was harmless to Barnes' rights under Title VII. Id.

In addition, Pennsylvania law applies a two-year statute of limitations to actions arising under 42 U.S.C. § 1983. Nelson v. County of Allegheny, 60 F.3d 1010, 1012 (3d Cir. 1995). "The limitations period begins to run when the cause of action accrues — *i.e.* generally when the injury occurs." Calle v. York Hospital, 232 F.Supp.2d 353, 357 (M.D.Pa. 2002) (citing Pocono Int'l Raceway. Inc. v. Pocono Produce. Inc., 468 A.2d 468, 471 (Pa. 1983)). Barnes' last injury occurred in November 1992. Accordingly, Barnes' limitation period in which to pursue a claim under Section 1983 expired on November 30, 1994.

Clearly, Barnes' putative claims, which Reynolds and Rozman allegedly trampled, were no longer viable at the time Reynolds and Rozman engaged in their allegedly wrongful conduct. Rozman supposedly advised Barnes in the spring of 1996 that she could not commence a civil action against Dixon and PSP. (Doc. 55.

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[2]Rozman, an assistant district attorney, also asserts the defense of absolute prosecutorial immunity under Imbler v. Pachtman, 424 U.S. 409 (1976). Because the court finds that Barnes' claims against Reynolds and Rozman lack threshold merit as set forth above, it is unnecessary to address this additional defense.

¶ 3 & Doc. 79, ¶ 3). (See also Doc. 69, Exhibit 1, pg. 54). Reynolds' allegedly unlawful conduct occurred after Barnes' discussion with Rozman. Id. Therefore, based on the undisputed facts of record, Reynolds and Rozman are entitled to judgment as a matter of law. The court will grant Reynolds and Rozman's motions for summary judgment.

C. ***Defendant Capriotti's Motion for Summary Judgment***

Barnes asserts a Fourteenth Amendment retaliation claim against Capriotti under 42 U.S.C. § 1983. As stated above, the applicable statute of limitations for Barnes' causes of action under Section 1983 is two years. *Nelson,* 60 F.3d at 1012. Barnes last day working with Capriotti was on or before December 12, 1999. (S~ Doe. 76, ¶1 26 & Doe. 86, ¶ 26). Barnes subsequently filed the complaint more than two years later on December 17, 2001. (Doc. 1). Therefore, the court will grant Capriotti's motion for summary judgment.

An appropriate order will issue.

SI Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge

Dated: July 2, 2003

NOT PRECEDENTIAL
UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 03-2965

CAROL BARNES and MICHAEL BARNES
Appellants,

v.

MICHAEL ROZMAN, JOHN CAPRIOTTI, WILLIAM DIXON, PSP and JOANNA REYNOLDS,
Appellees.

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. No. 1:cv-01-2396)
District Judge: Hon. Christopher C. Conner

Submitted under Third Circuit LAR 34.1(a)
July 2, 2004

Before: AMBRO, ALDISERT and STAPLETON, Circuit Judges.

(Filed: July 30, 2004)

OPINION OF THE COURT

ALDISERT, Circuit Judge.

Because we write only for the parties who are familiar with the fact, the procedural history and the contentions presented, we will not recite them except as necessary to the discussion. This appeal by Carol Barnes and her husband, Michael Barnes, requires this court to decide whether there should have been equitable tolling for Barnes' Title VII claims against her superior officers for alleged conduct while she was a civilian employee of the Pennsylvania State Police ("PSP"). The district court dismissed Barnes' complaint on the basis that she did not first exhaust her administrative remedies with the Equal Employment Opportunity Commission ("EEOC") or the Pennsylvania Human Relations Commission ("PHRC") as required. We will affirm.

Barnes brought two Title VII claims: one alleging that Major William Dixon, her supervisor, sexually harassed her between the summer of 1988 and November, 1992, and the other alleging that Major John Capriotti, Dixon's successor, retaliated against her for bringing the action. Barnes did not initiate any complaints against the individuals or the PSP in the EEOC or the PHRC.

"The jurisdictional prerequisites to a suit under Title VII are the filing of charges with the EEOC [or PHRC] and the receipt of the Commission's statutory notice of the right to sue." *Ostapowicz v. Johnson Bronze Co.*, 541 F.2d 394, 398 (3d Cir. 1976), cert. denied, 429 U.S. 1041 (1977) (citation omitted). A potential plaintiff is required to file her charge regarding alleged violations of Title VII with the EEOC or the PHRC "within 300 days from the alleged violation." 29 C.F.R. § 1601.13(a)(4)(ii)(A). The failure to exhaust these administrative remedies is akin to failing to

comply with a statute of limitations. *Robinson v. Dalton*, 107 F.3d 1018, 1021 (3d Cir. 1997).

Dixon's alleged harassment ended in November 1992, thus Barnes had until September 26, 1993 to file a charge. As to her retaliation claims, she maintained that retaliation culminated in her constructive discharge on January 12, 2000, thus giving her until November 8, 2000 to file a charge. It is undisputed that Barnes never filed a charge with the EEOC or the PHRC regarding either of her claims.

The 300 day statute of limitations can be subject to the doctrine of equitable tolling. *Communication Workers of Am. v. New Jersey Dep't of Pers.*, 282 F.3d 213, 216-217 (3d Cir. 2002). However, "[t]he law is clear that the courts must be sparing in their use of equitable tolling." *Seitzinger v. Redding Hosp. and Med. Ctr.*, 165 F.3d 236, 239 (3dCir. 1999).

Equitable tolling may be applicable in circumstances where the defendant actively misled the plaintiff. *United States v. Midgley*, 142 F.3d 174, 179 (3d Cir. 1998) (internal quotation and citation omitted). The district court properly determined that, to invoke equitable tolling, the misleading conduct must occur before the expiration of the limitation period. *Kocian v. Getty Refining & Mktg. Co.*, 707 F.2d 748, *754-755* (3d Cir. 1983) (overruled on other grounds).

Barnes contends that equitable tolling should apply because the PSP attorney, Joanna Reynolds, actively misled Barnes by telling her that she could not bring a civil action against the PSP or Dixon, pursuant to Dixon's plea agreement for criminal charges resulting from a harassment complaint filed by a female co-worker of Barnes. Reynolds' allegedly misleading conduct took place in 1996. With respect to any Title VII claim against the PSP or Dixon as a

result of Dixon's conduct, the time period for filing an administrative charge had expired almost two years before this alleged statement. With respect to any Title VII claim against the PSP or Capriotti as a result of Capriotti's conduct, Reynolds was not even alleged to have discussed this with Barnes. The district court therefore properly concluded that equitable tolling may not apply.

Finally, the statute of limitations for a claim arising under 42 U.S.C. § 1983 is the state statute of limitations for personal injury actions, which in Pennsylvania is two years. *Garvin v. City of Philadelphia*, *354* F.3d *215*, 220 (3d Cir. 2003) (citations omitted). The district court properly determined that the statute of limitations for Barnes' Fourteenth Amendment retaliation claim against Capriotti, brought under section 1983, expired prior to the December 17, 2001, filing of the complaint in this matter, as Barnes' last contact with Capriotti was on or before December 12, 1999. And the district court properly concluded that Barnes could not maintain a First Amendment claim against Reynolds because the time period for filing a lawsuit against the PSP and Dixon had expired before Reynolds allegedly told Barnes that she could not sue PSP and Dixon.

We have considered all contentions raised by the parties and conclude that no further discussion is necessary.

The judgment of the district court will be affirmed.